EVIDENCE—POSSESSION OF STOLEN PROPERTY—PRESUMPTION.—In a prosecution for receiving stolen property, an instruction that "the finding of stolen property in the possession of another shortly after said property had been stolen raises the presumption of guilt as against the person in whose possession the same is found * * *" was *held* not erroneous when considered with other instructions. *State* v. *Ross* (N. D., 1920), 179 N. W. 993.

In a prosecution for grand larceny, an instruction "that the possession of property recently stolen and unexplained by the defendant affords presumptive evidence of his guilt" was *held* erroneous, such language being an instruction on the weight of evidence. *Pearrow* v. *State* (Ark., 1920), 225 S. W. 311.

The great majority of the courts deny that any legal presumption attaches to the unexplained possession of property in cases similar to those above, agreeing that the weight of such evidence is to be determined solely by the jury. Of these, probably the greater number hold such unexplained possession in itself warrants a conviction by the jury. *Kurpgeweit* v. *State*, 97 Neb. 713; *Blackburn* v. *State*, 78 Tex. Cr. R. 177; *Mosley* v. *State*, 11 Ga. App. 303; *State* v. *Perry*, 165 Iowa 215. Others hold that the mere fact of unexplained possession alone will not warrant a conviction. *People* v. *Rodericquez*, 16 Cal. App. 358; *State* v. *Trosper*, 41 Mont. 442. A few support the doctrine that a legal presumption of guilt attaches. *State* v. *Turner*, 65 N. C. 592; *State* v. *Good*, 132 Mo. 114. Though these rules are quite different, the instructions of the courts supporting the doctrine that no presumption of law attaches show a misleading and unfortunate confusion of terms. These courts, as in the principal cases, frequently speak of a "presumption of guilt," "presumptive evidence of guilt," "prima facie evidence of guilt," etc., failing to point out clearly the difference between a presumption of law and a so-called "presumption" or inference of fact. The former requires a jury, in the absence of evidence to the contrary, to find according to the presumption; the latter allows the jury to draw its own conclusion regarding the ultimate fact. The first involves a compulsory conclusion made by law; the second, a "permissible deduction" by the jury. Instructions similar to those mentioned are likely to cause the jury to find in accordance with the "presumption" laid down by the court, though the latter intends to allow them merely an inference of fact. Unless very carefully qualified and explained so that the ordinary jury can understand, such instructions can most safely be held erroneous. See WIGMORE ON EVIDENCE, Sec. 2513, and 12 L. R. A. (N. S.) 199.

EXTRATERRITORIALITY—EASEMENTS OF LIGHT AND AIR IN CHINESE LAW.—According to a recent decision of the British Consular Court, there is no easement of light and air by implied grant in the law of China. A British subject owned a house and lot in Shanghai in 1868. He sold the house and part of the lot to another British subject and the adjoining unoccupied part of the lot to a German subject. In 1920 the owner of the house applied to the Consular Court for an injunction to restrain the owner of the adjoining

unoccupied part from interfering with an easement of light and air. Under similar circumstances the English law would recognize an easement of light and air arising by implied grant. *Palmer* v. *Fletcher,* 1 Lev. 122; *Allen* v. *Taylor,* 16 Ch. D. 355. But this suit involved an interest in land, and so had to be decided according to the *lex loci rei sitae,* i. e., the law of China. *Charlesworth, Pilling & Co.* v. *Secretary of State for Foreign Affairs* (1901), A. C. 373. No mention could be found of any such easement in any known Chinese law. The court was inclined to regard the theory of implied grant as something which had developed in English law to meet local needs, and it doubted whether any such theory existed in Chinese law in 1868. Even in English law the implied grant is a presumption which may be rebutted by showing extraordinary circumstances. The court thought that diversity of nationality among dominant and servient owners might be regarded as an extraordinary circumstance in an extraterritorial country. The injunction was denied, leave being granted to appeal to the Privy Council. *Tam Wa et al.* v. *Atkinson & Dallas* (Nov., 1920), H. B. M. Supreme Court for China and Corea.

INTOXICATING LIQUORS—WHAT IS A BEVERAGE—QUESTION OF FACT.—The defendant was indicted for selling Jamaica ginger containing 88 per cent alcohol, under a statute providing that "any beverage which contains more than one per cent of alcohol * * * shall be deemed to be intoxicating liquor within the meaning of this chapter." *Held,* the mere presence of a high percentage of alcohol did not make the preparation an intoxicating liquor under the statute, without a further finding by the jury that it could be and ordinarily was used as a beverage. *Commonwealth* v. *Sookey* (Mass., 1920), 128 N. E. 788.

Whether a liquid containing an alcoholic content capable of producing intoxication, but which is not ostensibly sold as a beverage, is within a prohibitory statute depends largely, of course, upon the terms of the particular statute. Thus, where a statute makes it unlawful to sell "any intoxicating decoction, mixture, compound, or bitters whatever, in any quantity or for any use or purpose," medicines, toilet preparations, etc., are included, although sold in good faith and not ordinarily used as beverages. *Compton* v. *State,* 95 Ala. 25. But in prosecutions for violations of other statutes expressly including such liquids, where the prohibition is simply against the sale of the same as beverages, the question of intent is controlling. *Walker* v. *Daily,* 101 Ill. App. 575; *State* v. *Hastings,* 2 Boyce (Del.) 482; *Bertrand* v. *State,* 73 Miss. 51. See also *Schemmer* v. *State* (Neb., 1920), 180 N. W. 581. Under statutes like that involved in the principal case, employing merely general descriptive terms such as "alcoholic liquor," "intoxicating liquor," or "intoxicating beverage," in addition to the question of the actual alcoholic content of the liquid, the additional question arises as to whether it is a beverage or liquor within the meaning of the statute. One court has said that a fluid is within the statute only when it is a liquor intended for use as a beverage, and capable of being so used, which contains alcohol in such a proportion